



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1994

Mr. Tom O'Connell  
Collin County District Attorney  
Collin County Courthouse  
210 S. McDonald, Suite 324  
McKinney, Texas 75069

OR94-011

Dear Mr. O'Connell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 21941.

The Collin County District Attorney (the "district attorney") has received a request for "the complete [investigative] file number CR-92-0229, The State of Texas v. Roy Gene Brown, including investigation reports, exhibits, photographs, statements, laboratory analysis reports, or any other information contained in file number CR-92-0229." The district attorney contends that the requested information is excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.103(a) excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 552.103(a). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You contend that information regarding file number CR-92-0229 is excepted from disclosure under section 552.103(a) because section 552.103(b) provides that

For purposes of [section 552.103], the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

Section 552.103(b) is not a separate exception to disclosure. It merely provides a time frame for the section 552.103(a) exception.<sup>2</sup> Open Records Decision No. 518 (1989) at 5. Unless a governmental body has met its burden of showing that litigation is pending or reasonably anticipated under section 552.103(a), section 552.103(b) is not applicable.

You state that the case at issue was no-billed by the Collin County Grand Jury on June 6, 1992 but that "the investigation of this matter has continued and will continue as long as leads are available to be pursued." The affidavit of Kenneth Moore, Chief Investigator for the district attorney's office submitted to this office further states that "the murder of Dwight Wayne Edwards [file number CR-92-0229] is still under investigation and will remain as an open homicide case." Because you have demonstrated that prosecution is still sought in this case and, therefore, that litigation is reasonably anticipated under section 552.103(a), you may withhold the requested information under section 552.103(b) of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>We stress that the codification of the Open Records Act in the Government Code is a nonsubstantive revision. Acts 1993, 73d Leg., ch. 268, § 47. Although former section 3(e), V.T.C.S. art. 6252-17a, appears in the codification as a subsection of Government Code section 552.103, it was not one of the enumerated exceptions to public disclosure under section 3(a) of V.T.C.S. article 6252-17a.

MRC/LBC/rho

Ref.: ID# 21941

Enclosures: Submitted documents

cc: Mr. Ulmer Graydon Wilson  
Richard Haynes & Associates, P.C.  
4300 Scotland  
Houston, Texas 77007-7394  
(w/o enclosures)